
OLR Bill Analysis

sHB 5365 (as amended by House "A")*

AN ACT CONCERNING COURT OPERATIONS AND VICTIM SERVICES.

SUMMARY:

This bill makes numerous changes to court operations and victim services. It:

1. makes judge trial referee evaluations available to Judiciary Committee members before a hearing on a referee's nomination;
2. allows the Judicial Branch to enter into agreements with other agencies on a broader range of security matters;
3. makes changes regarding summary process and occupants of nonresidential property;
4. expands the courts' use of electronic documents and communications;
5. indemnifies attorneys appointed by the court to inventory the files of inactive, suspended, disbarred, or resigned attorneys in the same way as state employees;
6. specifies that someone who pleads not guilty to an infraction or certain violations can, at a court proceeding, agree with the prosecutor on the amount of the fine and pay it without appearing before a judicial authority;
7. alters the rules for constituting a Supreme Court panel and agreeing to hear an appeal from an Appellate Court decision;
8. requires the Department of Motor Vehicles (DMV) to give the jury administrator the latest updated file of people holding

- identity cards to use when compiling the master list for summoning jurors;
9. allows alternate jurors in civil trials to remain in service after deliberations begin;
 10. specifies that motor vehicle violations punishable by a sentence of more than one year are considered unclassified felonies for certain purposes;
 11. automatically terminates a defendant's bail bond when he or she is admitted to the supervised diversionary program for people with psychiatric disabilities, as for other diversionary programs;
 12. requires a defendant to make a motion for a nolle 13 months after a prosecutor continues a case and there is no prosecution or disposition in order to have the records erased, instead of having them automatically qualify for erasure;
 13. authorizes victim compensation when the Judicial Branch's Office of Victim Services (OVS) or a victim compensation commissioner reasonably concludes that (a) an alleged sexual assault crime or risk of injury to a minor occurred and (b) the personal injury was disclosed to certain individuals;
 14. eliminates the \$100 deductible on the total amount of victim compensation determined for an injury (§§ 27-28);
 15. expands OVS's lien for reimbursement of compensation paid to someone;
 16. specifies that Connecticut courts can issue orders regarding civil unions performed in other jurisdictions;
 17. limits access to information on certain plans developed by probation officers and expands access to juvenile delinquency records;
 18. allows Court Support Services Division (CSSD) personnel to use

videoconferencing to interview defendants at police stations, when determining appropriate bail and conditions of release (§ 35);

19. extends to intake, assessment, and referral (IAR) specialists many of the duties, responsibilities, and protections given to bail commissioners;
20. requires the court to determine that a matter is not frivolous before it waives a court fee or the state pays service of process costs for an indigent party;
21. requires service only once on the Attorney General's Office for all defendants sued in their official capacity in an inmate's lawsuit against a state entity, employee, or official;
22. extends, from June 30, 2012 to June 30, 2013, the termination date for the Sexual Assault Forensic Examiners Advisory Committee, which advises OVS on a program to train sexual assault forensic examiners and make them available to sexual assault victims at participating hospitals (§ 46);
23. repeals judges' authority to appoint messengers and assistant messengers and set their compensation and assignments (§ 47); and
24. repeals obsolete provisions and makes technical and conforming changes.

*House Amendment "A" (1) deletes provisions of the original file that would have required DMV to suspend the license and registration of someone who does not pay certain fees and allowed use of Supreme Court senior judges and Appellate and Superior Court judges and senior judges on Supreme Court panels when the business of the court required it; (2) adds provisions on OVS training of IAR specialists, service of process for suits by inmates, indigents and frivolous suits, and the Sexual Assault Forensic Examiners Advisory Committee; and (3) makes technical changes.

EFFECTIVE DATE: October 1, 2012; except the provisions (1) on judge trial referee evaluations, Supreme Court certification and panels, and civil unions from other jurisdictions, which are effective July 1, 2012 and (2) extending the Sexual Assault Forensic Examiners Advisory Committee's termination date, which is effective upon passage.

§ 1 — JUDGE TRIAL REFEREE EVALUATIONS

The bill requires the Judicial Branch to make performance evaluations of judge trial referees available to the Judiciary Committee's members before a public hearing on the referee's nomination. Committee members must use the information only for the purposes for which it was given and they cannot further disclose it. Existing law requires the branch to make judges' evaluations available under the same circumstance and conditions.

§ 2 — AGREEMENTS WITH AGENCIES RELATED TO SECURITY

The law allows the Judicial Branch to enter agreements with other state agencies for management, training, or coordination related to courthouse security. The bill also allows the branch to enter these agreements for other security matters.

§ 4 — SUMMARY PROCESS-NONRESIDENTIAL TENANT'S POSSESSIONS

When a lessee or occupant fails to leave after receiving the required summary process notice, an attorney must produce documents justifying the claim for immediate possession of the premises. If the claim involves nonresidential property, the bill requires, instead of allows, the documents to include a claim for the defendant's possessions and personal effects. The landlord must still follow existing law on disposing of a tenant's property.

§ 5 — SUMMARY PROCESS AGAINST A SINGLE NONRESIDENTIAL OCCUPANT DUE TO DRUG ACTIVITIES

The law allows a landlord to get a summary process judgment and enforce it against a single occupant, living with several others, who sells drugs (1) on the leased premises or (2) within 1,500 feet of

the housing authority property within which he or she lives. The bill applies this to tenants of nonresidential property.

§ 6 — COMMUNICATIONS FROM COURTS

Under current law, a court clerk, including a probate court clerk, must notify counsel in writing of a court decision, order, decree, denial, or ruling unless the court made its ruling in the counsel's presence. The bill allows the written notice to be sent by mail or electronic means and requires notice to any appearing party as well.

The bill allows electronic communication by computer, fax, or other technology according to procedures and technical standards set by either the chief court administrator or probate court administrator. It gives notice delivered electronically the same validity and status as if sent by mail.

§ 7 — INDEMNIFICATION OF CERTAIN ATTORNEYS

The law immunizes from damages in civil suits attorneys appointed by the court under to court rules to (1) inventory the files of an inactive, suspended, disbarred, or resigned attorney and (2) take necessary action to protect the clients' interests. They are immune for damages or injuries caused in the discharge of their duties unless they acted wantonly, recklessly, or maliciously.

The bill gives these attorneys the same indemnification as state officers and employees. This requires the state to hold the attorneys harmless and indemnify them for financial loss and expense from claims due to their alleged negligence, deprivation of civil rights, or other acts or omissions causing damage or injury. This applies when the attorneys are discharging their duties but does not cover wanton, reckless, or malicious conduct. The attorney general must provide their defense; but if he determines it is inappropriate to do so, the state must pay for counsel if the attorney is otherwise entitled to representation by the state.

§ 8 — AGREED FINES FOR INFRACTIONS AND VIOLATIONS

By law, people alleged to have committed infractions and certain

violations can pay a fine by mail or choose to plead not guilty. The bill specifies that someone who pleads not guilty can, at a later Superior Court proceeding, (1) agree with the prosecutor on the amount of the fine to pay and (2) pay it without appearing before a judicial authority. Under the bill, the amount of the fine cannot be more than the fine established for the infraction or violation, and the person must pay any additional fees and costs set for the infraction or violation. The person must pay the Superior Court clerk.

As for payments by mail under current law, payment under the bill is considered a plea of nolo contendere (no contest) and is inadmissible in any civil or criminal proceeding to establish the person's conduct, but it does not affect the Department of Energy and Environmental Protection's or DMV's administrative sanctions authority.

Under the bill, the person does not need to submit a plea of nolo contendere in writing. The bill does not affect a person's right to request a trial.

§ 11 — SUPREME COURT CERTIFICATION FOR REVIEW

By law, an Appellate Court panel or aggrieved party can petition the Supreme Court to review an Appellate Court decision. Current law requires a vote of three Supreme Court justices to agree to review the decision. The bill also allows the court to review a decision on the vote of two judges if fewer than six are available to consider a petition.

§§ 12-14 — SUPREME COURT PANELS

Under current law, a party has a right to be heard by a panel of five Supreme Court members. The bill instead gives a party a right to a panel of at least five and requires the court to sit in panels of five, six, or seven judges under rules the court adopts.

Currently, Supreme Court senior judges, Superior Court judges, and Appellate Court judges and senior judges can sit on a Supreme Court panel if the court's members cannot constitute a panel due to disability or disqualification. The bill expands the use of Supreme Court senior judges by (1) allowing them to be part of a panel when at least one

justice is disabled, disqualified, or unavailable and (2) requiring their addition to a panel before any of the other judges.

Under the bill, Superior Court judges and Appellate Court judges and senior judges can be added to a panel if Supreme Court justices and senior judges are disabled, disqualified, or unavailable.

§ 15 — LIST OF PEOPLE HOLDING IDENTITY CARDS USED FOR JUROR LISTS

The bill requires DMV to give the jury administrator the latest updated file of people holding identity cards to use when compiling the master list for summoning jurors. The bill adds this to the lists of licensed drivers, residents with permanent place of abode in Connecticut who filed a personal income tax return in the last tax year, unemployment compensation recipients, and electors that the administrator uses to compile the master list. By law, the administrator must attempt to delete duplicate names, names of those excluded from jury service, and names of deceased people before randomly summoning jurors.

§ 16 — ALTERNATE JURORS IN CIVIL TRIALS

By law, an alternate juror becomes part of the jury panel in a civil case if a juror dies or the judge excuses a juror who is unable to perform his or her duty. Under current law, alternates are excused when the jury begins deliberations. Under the bill, the court (1) can keep alternates in service after deliberations begin and (2) if an alternate joins the regular panel after deliberations began, must instruct the jury to start deliberations anew.

§§ 18-21 — MOTOR VEHICLE VIOLATIONS AS FELONIES

Under case law, a second conviction for driving under the influence (CGS § 14-227a), which carries a possible prison term of over one year, is a criminal offense and not a motor vehicle violation (*McCoy v. Commissioner of Public Safety*, 300 Conn. 144 (2011)).

The bill specifies that any motor vehicle violation for which a sentence of more than one year may be imposed (see BACKGROUND)

is considered an unclassified felony for purposes of:

1. sentencing to probation, and thus a person convicted of one of these motor vehicle violations can be sentenced to up to three years probation, but up to five years on a case-by-case basis, and can be considered for early termination of his or her probation terms;
2. the crime of criminal possession of a firearm or electronic defense weapon, which can be committed by possessing one of those items while having a prior felony conviction, thus qualifying one of these motor vehicle violations as a prior felony conviction;
3. taking a sample for DNA testing based on a felony conviction; and
4. the interstate compact for adult offender jurisdiction, which governs supervision of adult offenders in the community who are authorized under the compact to travel across state lines.

§ 22 — TERMINATION OF BAIL BONDS

The bill automatically terminates a defendant's bail bond when he or she is admitted to the supervised diversionary program for people with psychiatric disabilities. The law already terminates bonds on admission to other programs such as accelerated rehabilitation, the pretrial alcohol education program, the community service labor program, and the pretrial drug education program.

§ 23 — ERASURE OF CERTAIN RECORDS

By law, all police, court, and prosecutorial records of a criminal charge that is nolle (the state declines to prosecute) are erased if at least 13 months have passed since the nolle. Current law also considers a case nolle and allows records to be erased if the prosecutor continues the case and there is no prosecution or disposition for 13 months. The bill requires the arrested person to make a motion for a nolle after 13 months in order to have the records erased.

§ 24 — BAIL BONDS

By law, the total amount of a forfeited bond for a motor vehicle violation that is composed in part of certain additional fees and costs imposed on these violations must be deposited in the General Fund or Special Transportation Fund. The bill adds to the list of fees and costs the \$10 surcharge on certain motor vehicle violations that the state must remit to the municipalities where the violations occurred. The surcharge applies to anyone who pays a fine or forfeiture for any of 35 motor vehicle violations, including: (1) speeding, (2) reckless driving, (3) driving under the influence, (4) making an illegal turn, (5) failing to yield right of way, (6) failing to stop for a school bus (for a first offense), and (7) failing to stop at a stop sign. The surcharge also applies to anyone who pays a fine or forfeiture under any ordinance enacted in accordance with these laws. The Superior Court clerk or the chief court administrator (or her designee) must certify to the comptroller the amount due for the previous quarter to each municipality.

§§ 25-30 — VICTIMS***Administering Compensation and Services (§ 25)***

By law, OVS can apply for and use grants to implement victim services and award grants or purchase services. The bill deletes a provision requiring it to do so according to a plan developed by January 1, 1994, in coordination with various agencies, to effectively administer victim compensation and coordinate delivery of services.

Victim Compensation for Alleged Sexual Assault or Risk of Injury Crimes (§ 26)

The bill authorizes victim compensation when OVS or a victim compensation commissioner reasonably concludes that (1) an alleged sexual assault crime or risk of injury to a minor occurred and (2) the personal injury was disclosed to certain individuals. The bill applies to the crimes of sexual assault in the 1st, 2nd, 3rd, or 4th degree or 3rd degree with a firearm; 1st degree aggravated sexual assault; aggravated sexual assault of a minor; sexual assault in a spousal or cohabiting relationship; and risk of injury to a minor. Compensation can be paid if

the personal injury is reported to a:

1. licensed physician, physician assistant, advanced practice registered nurse, registered nurse, practical nurse, psychologist, marital and family therapist, professional counselor, or clinical social worker;
2. resident physician or intern at a hospital, whether or not licensed;
3. police officer;
4. mental health professional;
5. licensed or certified emergency medical services provider or alcohol and drug counselor;
6. sexual assault or battered women's counselor; or
7. Department of Children and Families employee.

By law, OVS may compensate victims injured or killed as a result of (1) attempts to prevent crime, aid police, or apprehend criminal suspects; (2) attempts or actual commissions of any crime by another; (3) operation of a motor vehicle by someone else convicted of driving under the influence of drugs or alcohol, 2nd degree assault with a motor vehicle while intoxicated, or 2nd degree manslaughter with a motor vehicle while intoxicated; or (4) terrorist crimes.

OVS Liens (§ 29)

By law, OVS has a lien against any amount an applicant for victim compensation wins in a suit against those responsible for the injury or death for which compensation was granted. This lien is for two-third of the amount paid for victim compensation or restitution services.

The bill also gives OVS a lien for the same amount of reimbursement on money an applicant recovers from other sources, including payments from state or municipal agencies, insurance benefits, or workers' compensation awards as a result of the incident

or offense that gave rise to the application.

§§ 31-32 — CIVIL UNIONS FROM FOREIGN JURISDICTIONS

The bill specifies that Connecticut courts can enter orders of dissolution, annulment, or legal separation regarding valid civil unions performed in foreign jurisdictions. It deems these actions family relations matters. It is unclear whether the courts' authority over family matters currently extends to foreign civil unions.

§ 33 — ACCESS TO PROBATION OFFICER PLANS

Under the bill, information in alternative sentencing and community release plans prepared by probation officers is only available to:

1. Judicial Branch employees who require access to the information in performing their duties,
2. state and federal employees and authorized agents involved in the design and delivery of treatment services to the person who is the subject of the plan,
3. state or community-based agency employees providing services directly to the person, and
4. an attorney representing the person in any proceeding where the plan is relevant.

By law, probation officers:

1. must complete alternative sentencing plans for people who enter a stated plea agreement with a prison term of up to two years when the court orders them to and
2. may develop a community release plan for people sentenced to a prison term of up to two years who have (a) served at least 90 days in prison and (b) complied with Department of Correction prison rules and necessary treatment programs, and must apply for a sentence modification hearing if they develop such a plan.

§ 34 — ACCESS TO JUVENILE RECORDS

Current law allows state and federal employees and authorized agents to access records of delinquency proceedings if they are involved in delinquency proceedings, providing services directly to the child, or designing or providing treatment programs for juvenile offenders. The bill also allows them access if they are involved in delivering court diversionary programs.

The bill also gives community-based youth service bureau officials access to these records if they are performing any of the functions listed above.

§§ 35-43 — IAR

The bill extends many of the duties, responsibilities, and protections given to bail commissioners to IAR specialists. These provisions, among other things, govern:

1. notice from police when a defendant is not released on bail,
2. interviewing and investigating the defendant to set conditions of release,
3. informing the court of a defendant who cannot meet the conditions of release,
4. appearing in court if a defendant does not intend to appear,
5. protection from civil liability for damages on account of releasing a person on bail,
6. receiving information about a defendant who is on or being considered for pretrial release from certain Judicial Branch employees in a local family violence intervention unit, and
7. administering oaths.

It also gives OVS authority to train IAR specialists on victims' rights and available services (§ 25).

The Judicial Branch created the position of IAR specialist and these employees currently perform many of the same functions as bail commissioners.

§ 44—SERVICE OF PROCESS FOR INMATE SUITS AGAINST THE STATE

By law, a proper officer must serve process in a civil action against the state; a state institution, board, commission, department, or administrative tribunal; or an officer, servant, agent, or employee of one of them by (1) leaving a true and attested copy of the process, including the declaration or complaint, at the attorney general's office or (2) sending a true and attested copy of the process, including the summons and complaint, to the attorney general's office by certified mail, return receipt requested.

For a civil action brought by an inmate against one of these entities or individuals, the bill only requires the proper officer to leave or mail one copy for all defendants who are sued in their official capacity

By law, proper officers include state marshals, constables, and other officers authorized by statute.

§ 45—INDIGENTS AND FRIVOLOUS LAWSUITS

Current law requires the court to waive a court fee and the state to pay service of process costs for a party to a civil or criminal matter who is indigent and unable to pay. The bill additionally requires the court to determine that the matter is not frivolous before the court must waive a fee or the state must pay for service of process.

BACKGROUND

Motor Vehicle Violations

The following are examples of motor vehicle violations that carry a prison term of more than one year:

1. possessing a motor vehicle with a changed identification number (CGS § 14-149(a));
2. altering a motor vehicle identification number (CGS § 14-

149(e));

3. operating a chop shop (CGS § 14-149a);
4. motor vehicle title certificate fraud (CGS § 14-196(a));
5. willful misuse of motor vehicle title certificate (CGS § 14-196(b));
6. evading responsibility, when causing serious injury or death (CGS § 14-224(a));
7. driving under the influence, second and subsequent offenses (CGS § 14-227a);
8. driving under the influence when under age 21, second and subsequent offenses (CGS § 14-227g); and
9. using a traffic signal preemption device, when it results in an accident (CGS § 14-299a(f)).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 42 Nay 0 (03/26/2012)

Appropriations Committee

Joint Favorable

Yea 52 Nay 0 (04/23/2012)